

## **REMARKS**

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicants request that the Examiner carefully review any references discussed below to ensure that Applicants' understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

By this Amendment, claims 2, 4, 12, 21, 38, 39, 50 and 56 are amended. Claims 1, 2, 5, 7, 12-26, 36-39, and 50-56 remain pending in the application, with claims 19, 20, 23-26, 52, 53, and 56 being withdrawn.

In the Office Action, claims 12–18 were rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement; claims 5 and 12 were rejected under 25 U.S.C. § 112, second paragraph as being indefinite; claims 12, 17, 18, 21, 22, 39, 50, and 51 were rejected under 35 U.S.C. § 102(b) as being anticipated by U. S. Patent No. 5,663,520 to Ladika; claims 12, 13, 16, 17, 21, 22, and 36-19 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,822,963 to Bateman; claims 12, 17, 18, 21, 22, 39, 50, and 51 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,600,084 to Gonzalez; claims 1, 2, 5, 7, and 54 were rejected under 35 U.S.C. § 103(a) as being

unpatentable over Ladika; and claims 14, 15, and 55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Bateman.

### **Rejections under 35 U.S.C. § 112**

Applicants traverse the rejection of claims 12–18 under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. Applicants submit that one of ordinary skill in the art would understand and appreciate the scope of the claims as previously presented in light of the specification and the drawings. However, in an effort to further prosecution, claim 12 is amended above to clarify the scope of the claimed invention. Applicants submit that claim 12 is allowable and that claims 13-18 are allowable at least for their dependence on claim 12.

Applicants traverse the rejection of claim 5 under 35 U.S.C. § 112, second paragraph as being unclear. Claim 5 is amended to clarify the scope of the claimed invention.

Applicants traverse the rejection of claim 12 as failing to comply with the written description requirement. The Office Action seems to be requiring that the claims include each limitation of the elected species as drawn. Applicants submit that claims are not defined by or limited in scope to any disclosed embodiment in the specification or drawings, but rather are defined by the claim language. However, claim 12 is amended to further clarify the scope of the claimed invention.

### **Rejection Under 35 U.S.C. §102(b)**

#### **Rejection based on Ladika**

Applicants respectfully traverse the rejection of claims 12, 17, 18, 21, 22, 39, 50, and 51 under §102(b) as being anticipated by Ladika for at least the reason that Ladika fails to disclose or suggest each of the elements of the claimed invention. With respect to claim 12, for example, Ladika fails to disclose or suggest at least “the bullet containment frame and at least a portion of the mounting bracket being disposed in front of the facing strip and two pieces of plate.” The “mounting bracket” of Ladika is disposed between the metal body structure of the vehicle (the “facing strip” asserted by the Examiner) and the steel plates. See Figs. 1 and 8 of Ladika. Thus, neither the “bullet containment frame” (the car) nor any portion of the “mounting bracket” is disposed in front of the “facing strip.” Because Ladika fails to disclose or suggest each and every element of claim 12, Applicants submit that claim 12 is in condition for allowance.

With respect to claim 21, Ladika fails to disclose or suggest at least “a facing strip disposed so as to cover one side of said edges of the first piece of steel plate and the second piece of steel plate,” as recited. The edge of plate 60 in Ladika (244 in Fig. 8) is not covered by 250 or 264, but is entirely exposed. Thus, Ladika does not disclose and cannot suggest the cited portion of claim 21. For at least this reason, Applicants submit that claim 21 is in condition for allowance.

With respect to claim 39, Ladika similarly does not disclose or suggest at least “metal plates joined together by a facing strip.” The plates of Ladika are disclosed as being joined together by the structural aluminum tube 246 (see Fig. 8, and columns 9 and 10). This tube is then fastened to the vehicle structure 114 (the “facing strip” cited by the Examiner) by a bolt. The bolts do not attach the “facing strip” to the metal plates, but rather attach the “facing strip” to the aluminum tube. Additionally, Ladika does not suggest attaching the plates in the

configuration as claimed. Thus, Ladika fails to disclose or suggest each and every element of claim 39. For at least this reason, Applicants submit that claim 39 is in condition for allowance.

Finally, regarding claim 50, Ladika simply fails to disclose or suggest at least “metal plates joined together by a facing strip” under similar arguments as those above. Because Ladika fails to disclose or suggest all elements of claim 50, Applicants submit that claim 50 is in condition for allowance.

Claims 17, 18, 22 and 51 are allowable at least for their dependence on an allowable independent claim.

#### **Rejection based on Bateman**

Applicants respectfully traverse rejection of claims 12, 13, 16, 17, 21, 22, 36-39, 50, and 51 under 35 U.S.C. § 102(b) as being anticipated by Bateman for at least the reason that the Office Action fails to establish that each and every element of the rejection is disclosed or suggested by Bateman. Regarding claims 12 and 39, the Office Action fails to establish that Bateman discloses or suggests at least “wherein the plurality of bolts do not hold the bullet containment frame to the mounting bracket,” as recited in claim 12, and similar language in claim 39.

The Office Action attempts to infer that since Bateman is silent regarding to what depth the bolts extend through the structure by stating that “the attachment of the bolts to the facing strip and the mounting bracket is not dependent upon the attachment of the containment frame.” Applicants submit that the Office Action cannot simply infer whatever limitations from what is not said in any particular reference, but rather the Office Action ***must establish*** that each and every element of the claimed invention ***is actually*** disclosed by the reference. In fact, the Office Action’s conclusions based on lack of disclosure are not even supportable by the Bateman

reference, since a cursory look at other embodiments disclosed in Bateman, such as Fig. 5, shows that at least some of the bolts of the other embodiments extend through additional structure. As such, the Office Action's admission that such a disclosure is not expressly present in Bateman is sufficient to establish that claims 12 and 39 are allowable over Bateman.

With respect to claim 21, the Office Action fails to establish that Bateman discloses or suggests at least "a bullet containment frame coupled to the at least one arm by a plurality of fasteners." The "at least one arm" of Bateman is identified to be the "mounting bracket arm" 238, which is not coupled to anything with fasteners, but is coupled only to the backing strip 230. Thus, claim 21 is in condition for allowance.

Regarding claim 36, the Office Action fails to establish that Bateman discloses or suggests at least "the wood post is attached to the attachment mechanism by at least one intervening structure." As can be seen in Fig. 7 of Bateman, the wood post is connected directly to the facing strip, and the facing strip is connected to the metal plates by the attachment mechanism. As such, Applicants submit that claim 36 is in condition for allowance.

With respect to claim 38, the Office Action fails to establish that Bateman discloses or suggests at least "a mounting bracket, wherein the bolts hold the mounting bracket to the facing strip and the wood post is attached to the mounting bracket independent of the bolts." The flange 238 of Bateman is used merely for support, and not as a mounting bracket to attach the wood post to the facing strip. The wood post taught by Bateman is not attached to the "mounting bracket" flange 238, except through the backing strip, the bolts, and the facing strip. As such, claim 38 is in condition for allowance.

With respect to claim 50, the Office Action fails to establish that Bateman discloses or suggests at least "a generally U-shaped mounting bracket attached to the facing strip." As such,

Applicants submit that claim 50 is in condition for allowance. Claims 13, 16, 17, 22, 37, and 51 are allowable at least for their dependence on an allowable claim.

**Rejection based on Gonzalez**

Applicants respectfully traverse rejection of claims 12, 17, 18, 21, 22, 39, 50, and 51 under 35 U.S.C. § 102 as being anticipated by Gonzalez for at least the reason that the Office Action does not establish that Gonzalez discloses or suggests each of the elements of the claimed invention. With regard to claim 12, the Office Action fails to provide any explanation of how Gonzalez allegedly discloses or suggest at least “a mounting bracket holding a bullet containment frame to the facing strip.” From the Figure provided, the facing strip of Gonzalez is held to the vehicle body by the bolts 16 and nuts 20, and would still be held to the vehicle body even without the “mounting bracket” 26. Similarly, Gonzalez fails to disclose or suggest at least “a backing strip disposed so as to cover said edges of the first piece of steel plate and the second piece of steel plate on a side opposite the facing strip,” as recited in claim 21, or at least “bolts attaching the facing strip to the metal plates do not extend into the bullet containment frame,” as recited in claim 39. Although the heads of the bolts of Gonzalez are covered by a thin shield 34 and ballistic grade material 26, the bolts attaching the facing strip to the metal plates still extend into the bullet containment frame (the vehicle body 10). Finally, regarding claims 50, the Office Action simply does not discuss how Gonzalez supposedly discloses or suggests at least “a plurality of sheets of material for inhibiting ricochetting of bullets impacting the plates.” Thus, the Office Action failed to establish that Gonzalez discloses or suggests each and every element of the claimed invention. As such, claims 12, 21, 39 and 50 are in condition for allowance.

Claims 17, 18, 22, and 51 each depend from an allowable claim and are allowable for at least that reason.

### **Rejection Under 35 U.S.C. §103**

Applicants respectfully traverse the §103(a) rejections of claims 1, 2, 5, 7 and 54 as being unpatentable over Ladika for at least the reason that the Office Action fails to establish a *prima facie* case of obviousness. The Office Action contends that a plurality of slots, although not disclosed by Ladika, would be obvious to one having ordinary skill in the art. The Office Action took Official Notice of the hole and slot configuration. However, Applicants believe that such Official Notice here is improper, because such a limitation is not obvious in combination with the other limitations as evidenced by the inability of the Office Action to produce any art teaching such a limitation. None of the prior art cited by the Office Action discloses or suggests the slot configuration according to the present invention. If such a configuration is as obvious as the Office Action indicates, Applicants believe that the cited prior art would have disclosed it, or at least, such art would be readily available to provide support for the Office Action's assertion of Official Notice. As such, Applicants maintain their assertion that claims 1, 2, 5, 7, and 54 are allowable.

Applicants respectfully traverse the §103(a) rejections of claims 14, 15 and 55 as being unpatentable over Bateman for at least the reasons discussed above regarding the patentability of claims 12 and 38 over Bateman, and because they depend from an allowable independent claim.

### **CONCLUSION**

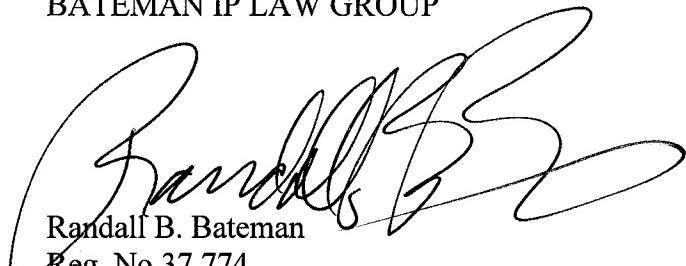
In view of the foregoing amendments and remarks, Applicants respectfully requests reconsideration of this application and the timely allowance of the pending claims. Counsel

requests that the Examiner contact the undersigned if the Examiner believes that a telephone interview of Examiner's amendment will further the prosecution of this application.

The Commissioner is hereby authorized during the entire pendency of this application to credit any overpayment and debit any amount owing, including fees for extensions of time, to Deposit Account No. 50-2720.

Respectfully Submitted,

BATEMAN IP LAW GROUP



Randall B. Bateman  
Reg. No.37,774  
P.O. Box 1319  
Salt Lake City, UT 84110  
Tel. (801) 533-0320  
Fax. (801) 533-0323  
E-mail: [mail@batemanip.com](mailto:mail@batemanip.com)